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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,841	11/05/2001	Daniel J. Powers	US010599	8004
24737	7590	08/30/2005	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			KRAMER, NICOLE R	
			ART UNIT	PAPER NUMBER

3762

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

THN

Office Action Summary	Application No. 09/993,841	Applicant(s) POWERS ET AL.	
	Examiner Nicole R. Kramer	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-7, 10, 15, 16 and 26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-7, 10, 15, 16 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 3-7, 10, 15-16, and 26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No. 6,397,104 in view of U.S. Patent No. 6,591,135 ("Palmer"). Palmer teaches that it is known in the art to utilize an attachable power source (batteries 24/26 of patient monitor 12) to charge a rechargeable battery that is located within the defibrillator unit (14) (battery 24/26 is used to charge defibrillator battery 28 via battery charger 82; see Figure 3 of Palmer and associated text). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the supply module as claimed by U.S. Patent No. 6,397,104 to charge a battery within the defibrillator as taught by Palmer in order to utilize a rechargeable battery within the defibrillator as a power source. Utilizing a rechargeable battery within the defibrillator as a power source

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to power the defibrillator avoids the requirement of changing or recharging a battery pack that powers the defibrillator.

Claim Objections

3. Claims 3-7, 10 are objected to because of the following informalities: the preamble of claim 10 states "A cartridge for a defibrillator including a rechargeable battery and a shock delivery circuit." It is unclear from this claim language whether the cartridge includes the rechargeable battery and a shock delivery circuit, or the defibrillator includes the rechargeable battery and a shock delivery circuit.

Examiner notes that the claim 10 later claims that "the power source (disposed within the interior of the cartridge) is operable to provide power to charge the rechargeable battery of the defibrillator." Examiner considers this portion of the claim to suggest that Applicant intends to require the defibrillator to include the rechargeable battery and a shock delivery circuit, and examines claims 3-7 and 10 accordingly. However, Examiner suggests amending the preamble to read -- A cartridge for a defibrillator, the defibrillator including a rechargeable battery and a shock delivery circuit--.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-7, 10, 15-16, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2003/0114885 ("Nova") in view of U.S. Patent No. 6,591,135 ("Palmer").

Nova discloses a cartridge (component package 10) for a defibrillator (50) comprising a housing (12) containing electrode pads (22) and a power source (32). The power source (32) supplies energy to the defibrillator (see paragraph 32). Nova fails to disclose that the power source (32) is operable to provide power to charge the rechargeable battery of the defibrillator. However, Nova discloses that the AED 50 may have one or more components that are supplemented by components provided by the component package 10 (see paragraph 54). Palmer teaches that it is known in the art to utilize an attachable power source (batteries 24/26 of patient monitor 12) to charge a rechargeable battery that is located within the defibrillator unit (14) (battery 24/26 is used to charge defibrillator battery 28 via battery charger 82; see Figure 3 of Palmer and associated text). It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the integrated component package (10) of Nova to charge a battery within the defibrillator as taught by Palmer in order to utilize a rechargeable battery within the defibrillator as a power source. Utilizing a rechargeable battery within the defibrillator as a power source to power the defibrillator avoids the requirement of changing or recharging a battery pack that powers the defibrillator.

With respect to claims 4-7, Nova/Palmer does not disclose specifically the type of battery being utilized in the integrated component package. It would have been obvious

to one having ordinary skill in the art at the time of applicant's invention to have employed any appropriate type of batteries since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Conclusion

6. The art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent Application No. 2003/0201752 ("Locke et al.") teaches a removable charging pack which is operable to recharge the power source of a portable external defibrillator. Examiner notes that Locke et al. is not prior art to the present application.

U.S. Patent No. 5,470,343 teaches a detachable power supply (10) for supplying power from an external power source for charging a battery (54) of the portable defibrillator (16).

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Response to Arguments

8. Applicant's arguments with respect to claims 3-7, 10, 15-16, and 26 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole R. Kramer whose telephone number is 571-272-8792. The examiner can normally be reached on Monday through Friday, 8 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NRK

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8/25/05

George Mannel